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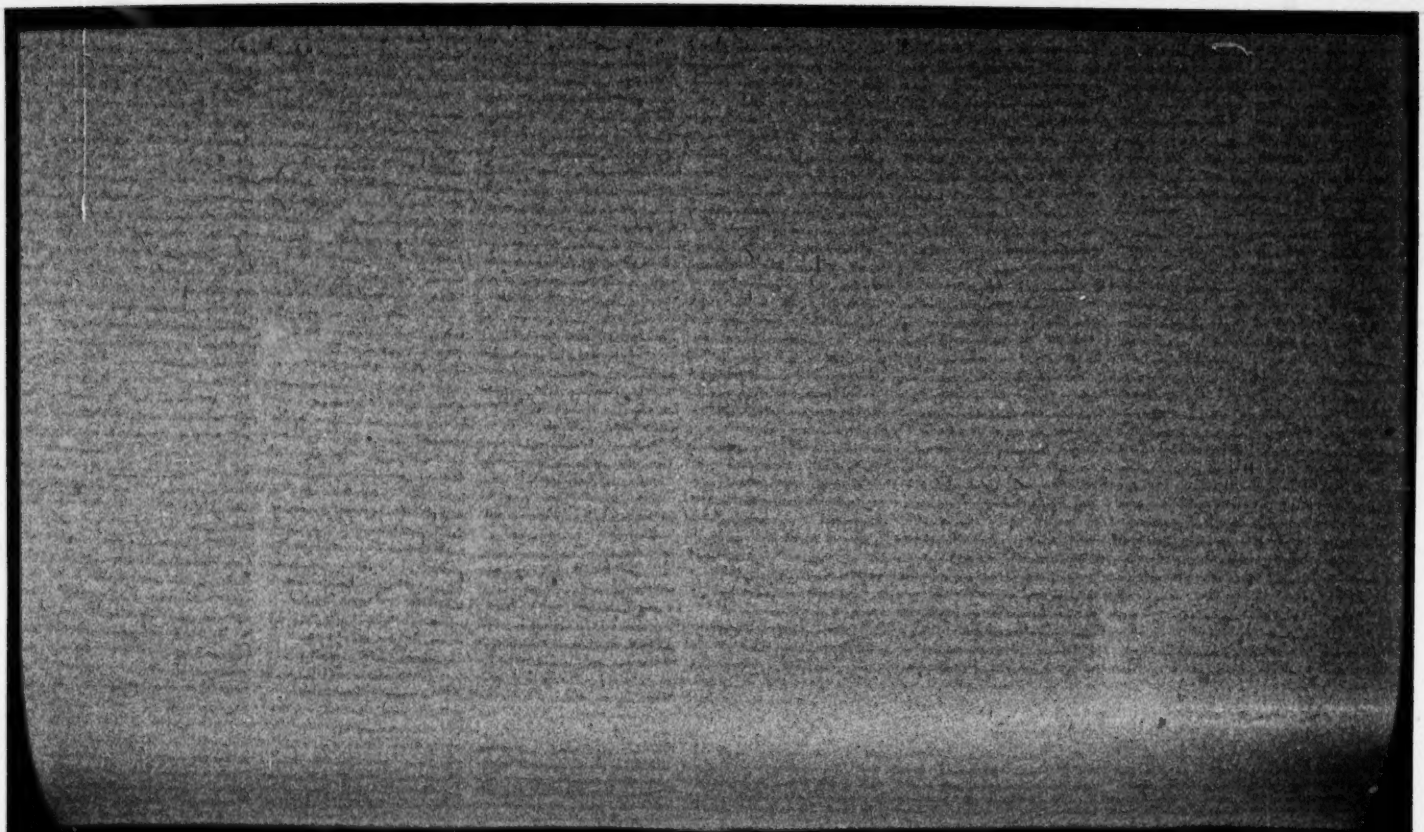
# In the Supreme Court of the United States

W. L. Wells Company, Petitioner,

vs.

Gastonia Cotton Manufacturing Company,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.



## IN THE SUPERIOR COURT OF THE UNITED STATES.

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*W. L. Wells Company, Petitioner,*

*vs.*

*Gastonia Cotton Manufacturing Company, Respondent.*

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**Petition for Writ of Certiorari, Requiring the Circuit Court of Appeals for the Fourth Circuit to Certify to the Supreme Court for its Review, the Case of "Gastonia Cotton Manufacturing Company, Plaintiff in Error, vs. W. L. Wells Company, Defendant in Error."**

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*To the Honorable, the Supreme Court of the United States:*

The petition of the W. L. Wells Company respectfully shows to this Honorable Court as follows:

1. That your petitioner is a corporation chartered, organized and doing business under the laws of the State of Mississippi, and on the 7th day of October, 1901, your petitioner commenced in the Circuit Court of the United States, for the Western District of North Carolina, a civil action against the respondent, the Gastonia Cotton Manufacturing Company, a corporation chartered, organized and doing business under the laws of the State of North Carolina, to recover the sum of Thirty-Five Thousand Three Hundred Ninety-Seven and 99-100 Dollars, with interest thereon, which your petitioner alleged was due to it as balance on account for cotton sold to respondent. At the same time and in the same court your petitioner commenced another action against the Avon Mills for the recovery of twenty-six thousand seven hundred and

fifty 36-100 Dollars and interest which your petitioner alleged to be due as balance on account of cotton sold by it to the said Avon Mills. The pleadings in these two actions were duly filed and at the June Term, 1902, of the said Circuit Court, at Charlotte, N. C., the two causes were by consent of counsel tried together, the same points being involved in both causes. (See record page 14.)

2. Your petitioner further shows that from the answers of the Gastonia Cotton Manufacturing Company and the Avon Mills and from the statement of counsel as set forth in the printed record (p. 15) the said respondents, who were defendants in the actions above mentioned, admitted the sale of the cotton to them and at the prices claimed, but defendants in the first place denied that the plaintiff was a corporation and in the second place the defendants claimed a payment amounting to Fifty Thousand Dollars ($50,000), which sum it was alleged had been paid by the defendants under an agreement between W. L. Wells, the President of your petitioner, whereby the said W. L. Wells agreed that "a portion of the purchase money due for the said cotton might be invested in the stock of a proposed manufacturing plant which was known as the Loray Mills." (See paragraph four of answer on page eight of record). This alleged agreement was controverted by your petitioner, and it was further contended by it that if such an agreement was made by W. L. Wells, your petitioner had no knowledge of it and had not authorized it nor in any way ratified it.

3. At the trial of the actions at the said June Term, 1902, of the Circuit Court at Charlotte, your petitioner introduced in evidence a charter or articles of incorporation duly granted to it by the State of Mississippi, under the provisions of the statute of that State (Record pp. forty, forty-one, forty-two, forty-three, forty-four), and your petitioner further showed in evidence a meeting of the corporation held on July 18th, 1898, in which the incorporators met, accepted the charter and subscribed for capital stock amounting to Ten Thousand Dollars ($10,000) (Record p. 45); and also introduced in evidence minutes of the meeting

of stockholders showing the election of the three incorporators as a Board of Directors of said corporation, and your petitioner further introduced evidence proving the account sued upon.

The respondents introduced in evidence a witness whose testimony it was claimed by respondents tended to show an agreement on the part of W. L. Wells that part of the purchase money of the cotton should be applied in payment of W. L. Wells' subscription to stock in the Loray Mills, a new company which was then being organized and which had no connection with respondents except that it had some of the same officers; and respondents further introduced evidence which they claimed tended to show that part of the purchase money of the cotton had been applied by the respondent in payment of W. L. Wells' subscription for stock in the said Loray Mills. All this testimony was duly objected to by your petitioner (Record pp. 111 and 112), and His Honor, Judge Boyd, ruled that the evidence was insufficient to sustain the contentions of respondents.

4. His Honor, Judge Boyd, further ruled on the evidence introduced that the plaintiff was a corporation duly created and organized under the laws of the State of Mississippi, and a citizen of Mississippi, with power to sue in the United States Courts, and also ruled that in as much as the respondents admitted the accounts to be due as set forth in the complaints and respondents had failed to introduce any evidence which in the opinion of the Court would warrant the jury in finding that your petitoiner had authorized the payment of any part of the purchase money of the cotton upon W. L. Wells' subscription to the stock of the Loray Mills, or had ratified any such appropriation of its funds, that your petitioner was entitled to judgment in accordance with the demands set forth in the complaints and His Honor directed a verdict in both of the cases in favor of your petitioner for the amount claimed, and interest in both cases in the sum of about seventy-five thousand dollars.

See opinion of His Honor, Judge Boyd, filed in the cause, printed in the record, page 184.

5. That as above stated it was agreed between counsel that only one of the actions should be taken upon writ of error to the Circuit Court of Appeals and that the other action should abide the decision of the Court of Appeals (p. 14), and thereupon the respondent, the Gastonia Cotton Manufacturing Company, sued out a writ of error and carried the case before the Circuit Court of Appeals for the Fourth Circuit, assigning as error, first, the ruling of the Court which declared your petitioner a corporation and a citizen of the State of Mississippi, entitled to bring this action and further assigning as error that His Honor Judge Boyd, held that the respondent had failed to adduce any evidence which would warrant the jury in sustaining respondent's plea of the payment of Fifty Thousand Dollars ($50,000).

The said action was heard at the November Term, 1902, of the Circuit Court of Appeals, at Richmond, Virginia, and thereafter by direction of the said Circuit Court of Appeals was reargued at the November Term, 1903, and at February Term, 1904, an opinion was filed in which the ruling of His Honor, Judge Boyd, was reversed in so far as he held that the plaintiff was a corporation, a citizen of Mississippi, and entitled to maintain an action in the United States Court.

A certified copy of the entire record in said cause in said Circuit Court of Appeals is herewith furnished and hereto annexed as a part of this application in conformity with rule thirty-seven (37) of this Hororable Court and the same is marked "Exhibit A."

6. Your petitioner respectfully submits to this Honorable Court that it is advised and believes, and respectfully represents, that the said judgment of the Circuit Court of Appeals is erroneous, and that this Honorable Court should require the said cause to be certified to it for its review and determination, under and in conformity

with the provisions of the 6th section of the Act of Congress, entitled, "An Act to establish Circuit Courts of Appeal, and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3rd, 1891: that the jurisdiction of the United States Circuit Court in said cause was dependent entirely upon the opposite parties to the suit or controversy being citizens of different States and therefore the judgment and decree of the said Circuit Court of Appeals is final, subject only to the power and authority of this Honorable Court to review the same by writ of certiorari, as provided in the 6th section of the Act aforesaid.

7. The contentions of your said petitioner made in said cause in the Circuit Court of Appeals and insisted upon here are among others the following:

(*a*) That your petitioner is now and has been ever since the date of the acceptance of the charter on the 18th of July, 1898, (Record p. 45,) and regularly constituted a *de jure* corporation, under the laws of the State of Mississippi. A copy of the material parts of the Statute of Mississippi regulating the incorporation of corporations is hereto attached, marked "Exhibit B," and by reference to this statute and to the Articles of Incorporation of your petitioner (Record p. 42,) and by reference to the minutes of the meeting of the incorporators (Record p. 45,) it will clearly appear to this Honorable Court that your petitioner was chartered and organized in strict conformity with the provisions of the laws of the State of Mississippi.

The first section of your petitioner's charter plainly provided that the incorporators "are hereby created a body politic and corporate, under the name and style of W. L. Wells Company, and by that name shall have succession for fifty years, shall have power to sue and be sued, etc." The second section of the charter provides that "as soon as Ten Thousand Dollars ($10,000) of said stock is subscribed and paid for, said corporation shall have power to commence business" and the third section states

that "said corporation is formed for the purpose of conducting a general cotton business, etc."

Your petitioner submits that there is manifest error in opinion of the Honorable Circuit Court of Appeals in that it entirely ignores the first section of the charter which by words *in praesenti* created your petitioner a corporation with power to sue; and the Circuit Court of Appeals, without discussing the first section of the charter, erroneously construed the second section to mean that the corporation could have no corporate existence until ten thousand dollars ($10,000) in capital stock was paid in; and it is respectfully submitted that the Circuit Court of appeals in this way confused the corporate existence (which was granted by the first section of the charter) with the franchise to do a cotton business, which franchise was not necessary to its corporate existence and upon which the corporate existence was not in any manner made to depend.

Your petioner further calls attention of this Honorable Court to the fact that in the opinion of the Circuit Court of Appeals the Court omits to take any notice of the fact that, although the capital stock was not paid in at the time of its organization, yet one of the incorporators loaned the Company Ten Thousand Dollars (Record p. 34); and the Court failed to give proper weight to another and more material fact, viz., that prior to the time of the dealings which are in controversy in this action the Company had realized profits amounting to Thirty-seven Thousand Dollars ($37,000), and had in its treasury capital profits largely in excess of Ten Thousand Dollars ($10,000) which the second section of the charter required to be paid in. (Record p. 34.)

(*b*) In the second place your petitioner submits that even though there might have been a failure on the part of the incorporators to do something required by the charter, yet there can be no controversy but that the incorporators attempted in good faith to organize a corporation under authority of, and according to, the laws of the state of Mississippi, and your petitioner actually assumed to act as a cor-

poration of Mississippi and dealt with all persons including the respondent for a long period as a corporation, and in all of its correspondence with the respondent used letter heads plainly stating that it was organized and doing busines as a corporation (Record p. 48, and see statement in record that all of correspondence was on similar letter heads Record p. 18.)

Your petitioner therefore submits that in any aspect of the case it was a corporation *de facto* and had a real corporate existence until it was attacked by the proper state authorities,—that its existence as a corporation cannot be called in question in a civil action of this nature. The Honorable Circuit Court of Appeals in its opinion conceded that your petitioner was a *de facto* corporation, but as your petitioner respectfully submits, it erroneously held that a corporation *de facto* is not a citizen of the state under the laws of which it assumed to act, and that it could not maintain an action in the Federal Court.

(*c*) Your petitioner further submits to this Honorable Court that the ruling of His Honor, Judge Boyd, who tried the Case in the Circuit Court, to the effect that the plea of payment which was the only defense upon the merit of the case could not be sustained, is supported by the evidence and by the law bearing upon the questions involved, as will appear by reference to the written opinion of His Honor, Judge Boyd, found in the record, and particularly to pages 186-89; and your petitioner therefore submits that on the point involved in the case, which was not passed upon by the Circuit Court of Appeals, the contention of the defendent is without support either in fact or law.

8. Your petitioner avers that questions of gravity and importance are involved in this case sufficient to justify the exercise of the jurisdiction vested in this Honorable Court to issue *writs of certiorari* requiring the causes to be brought here for review from the Circuit Court of Appeals.

The case at bar and the other case whose determination awaits the decision of this Honorable Court involves the

sum of about Seventy Thousand Dollars ($70,000), and involves the serious question as to the existence of your petitioner as a corporotion under the admitted facts in the case.

Your petioner submits that this is especially a case calling for review by this Honorable Court in that the Circuit Court of Appeals held in the opinion filed that the corporate existence of a corporation could be attacked in a civil action of this nature and further held that an organization, which was admittedly a corporation *de facto*, could not maintain a suit in the courts of the United States as a citizen of the State under authority of which, and by consent of which, it was doing business as a corporation. The Circuit Court of Appeals dismissed the case for want of jurisdiction and thus a serious and important question of the jurisdiction of the Federal Courts is involved in this case; if His Honor, Judge Boyd, in the Circuit Court had ruled that he was without jurisdiction for the reason given in the opinion of the Circuit Court of Appeals, then your petitioner is advised and believes that it would have had the right to have brought this action directly to this Honorable Court upon a writ of error for that the case involved a question of the jurisdiction of the Federal Court. Your petitioner therefore submits that inasmuch as the ruling of His Honor, Judge Boyd, was favorable to your petitioner, that your petitioner ought not to be deprived of the right of having this Honorable Court pass upon the question of jurisdiction by reason of the fact that the respondent, instead of bringing the jurisdictional question to this Honorable Court, carried it to the Circuit Court of Appeals.

Your petitioner further submits herewith a brief showing that the opinion of the Circuit Court of Appeals upon the question involved is in direct conflict with the rulings of this Honorable court and in conflict with the rulings of all the Circuit Courts of the United States that have passed on the question, and your petitioner avers that it is a matter of great importance that this Honorable

Court should settle and determine whether the ruling of the Circuit Court of Appeals in the case at bar is correct or the rulings of other Federal Courts upon the same question.

9. Your petitioner presents herewith certified copy of the record returned from the Circuit Court of the United States Circuit Court of Appeals for the Fourth Circuit and a copy of the record of the last named court.

Wherefore the petitioner prays that this Honorable Court will cause the writ of certiorari to be issued pursuant to the power vested in this Court by the Judiciary Act, approved March 3, 1891, requiring said United States Circuit Court of Appeals for the Fourth Circuit to certify the whole record and cause to this Court for consideration, and that thereon this Court will decide the matter of controversy between the parties.

And your petitioner will ever pray, etc.

W. L. WELLS COMPANY,
Petitioner.

STATE OF MISSISSIPPI,
County of Warren. } ss.

W. L. Wells, being duly sworn, says that he is an officer of the petitioner, the W. L. Wells Company; that he has read the foregoing petition and the facts therein stated are true to the best of his knowledge, information and belief; that this application is made in good faith, and not for the purpose of delay.

W. L. WELLS,
President of W. L. Wells Company.

Sworn to and subscribed before me, this eighteenth day of April, 1904, as witness my hand and notarial seal.

HORACE GARTH JONES.
[NOTARIAL SEAL.] Notary Public.

We the undersigned Attorneys, practicing in the Supreme Court of the United States, hereby certify that we have examined the foregoing petition, and, that in the opinion of each of us, it is well founded and is entitled to the favorable consideration of the Court.

MURRAY F. SMITH,
CHAS. W. TILLETT,
Attorneys.

## EXHIBIT B.

"The persons desiring to be incorporated may prepare a charter, drawn up on parchment or paper, which shall be headed 'The Charter of Incorporation of _____ _____ _____,' and it shall contain a clear and definite statement of the purposes for which the corporation is created, the names of the persons desiring to form the corporation, the corporate name by which it is to be known, the powers to be exercised, the period for which said corporation is to exist—never more than fifty years—together with whatever else may be proper to be stated. Charters for telegraph and telephone companies shall also describe the line they propose building and constructing, and the localities it is intended to traverse. And the proposed charter shall be published three consecutive weeks in one or more newspapers published at the domicile of the proposed corporation, and if there be not a newspaper published in the county where such proposed corporation is to be domiciled, then by publication in one or more newspapers published in this state and having circulation in the county of the domicile of the proposed corporation; but corporation for Masonic or Odd Fellows' Lodges, temperance societies, charitable associations, schools and literary institutions, religious societies, fire companies, mechanics' associations, fair associations and agricultural societies shall not be required to make such publication. And the charter so proposed and published, if required to be, shall be submitted for approval to the Governor, who shall take the advice of the Attorney-General as to the constitutionality and legality of the provisions of such charter; if the Governor approve it, he shall write his approval at the bottom of it, and sign his name thereto and shall also cause the great seal of the State to be thereto affixed by the Secretary of State; but the Governor may require amendments or alterations to be made previous to signing the same, or, if deemed expedient by him, he may withhold his approval entirely; and the powers therein specified shall by the approval of the char-

ter, be vested in such corporation, and it shall go into operation at the time and on the terms and conditions specified."

The remaining twenty-eight sections of this chapter relate to renewals and amendments, the powers of corporation already in existence, etc., and we do not therefore quote them.